IN THE MISSOURI SUPREME COURT

STATE OF MISSOURI.	)	
	)	
Appellant,	)	
	)	
v.	)	SC84060
	)	
JAMES E. BRATINA,	)	
	)	
Respondent.	)	

Appeal From
The Circuit Court of Cape Girardeau County
Division III, Thirty Second Judicial Circuit
Honorable Gary A. Kamp

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal by the State pursuant to Section 547.200, RSMo. 2000, of the judgment of Cape Girardeau County Associate Circuit Judge Gary A. Kamp sustaining a motion to dismiss the criminal prosecution of Respondent for committing the crime of abandonment of a corpse under Section 194.425, RSMo. 2000. In his judgment, the judge found Section 194.425, RSMo. unconstitutionally vague in violation of the Fourteenth Amendment of the United States' Constitution. The Supreme Court of Missouri has exclusive jurisdiction of this appeal since the Circuit Court of Cape Girardeau County is within the territorial jurisdiction of the Supreme Court and the appeal involved the constitutional validity of a Missouri statute. Missouri Constitution, Article V, Section 3 (as amended 1982).

STATEMENT OF FACTS

On January 15, 2001, Detective James Humphreys of the Jackson Police Department responded to a report of a dead body at 725 W. Independence, Apt. 1, Jackson, Missouri. (LF13) The Respondent, James E. Bratina, notified authorities that he had discovered his wife, Suyapa Bratina, unconscious on the bedroom floor at approximately 10:00 AM. (LF13) Respondent later admitted that he had known she was dead when he left for work that morning at 6:30 AM, and that he left their three year old daughter with her deceased mother until he returned home and "discovered" the body. (LF13) Respondent also admitted that he had called 911 and performed CPR on his deceased wife, knowing that she was already dead. (LF13) Respondent went on to state that he was "scared" and that he thought he could have contributed to her death in some way. (LF13)

On August 29, 2001, after the investigation was completed, a warrant was issued for the Respondent, charging him with one count of abandonment of a corpse and one count of endangering the welfare of a child in the second degree. (LF6-14) On September 27, 2001, Respondent filed a Motion to Dismiss, alleging that the statute criminalizing abandonment of a corpse was unconstitutionally vague. (LF15-16) On October 4, 2001, a hearing was held on Respondent's Motion to Dismiss, which was

granted on October 12, 2001. (LF21)

This appeal followed. Notice of Appeal was filed with the trial court on October 16, 2001. (LF1)

POINT RELIED ON

THE TRIAL COURT ERRED IN DISMISSING COUNT I, ABANDONMENT OF A CORPSE, BASED ON THE ALLEGED VAGUENESS OF THE CRIMINAL STATUTE IN QUESTION, SECTION 194.425 RSMo., FOR THE REASON THAT THE STATUTE GIVES SUFFICIENT NOTICE AND FAIR WARNING TO PERSONS OF ORDINARY INTELLIGENCE OF WHAT CONDUCT IS PROHIBITED, AND ADEQUATELY INFORMS PERSONS OF ORDINARY INTELLIGENCE OF WHAT OBLIGATIONS THEY HAVE

UNDER THE STATUTE AND GIVES ADEQUATE GUIDANCE TO PROSECUTING AUTHORITIES TO PREVENT ARBITRARY AND DISCRIMINATORY APPLICATION.

Section 194.425 RSMo. 2000.

State v. Wiles, 26 S.W.3d 436, 442 (Mo.App. S.D. 2000).

State v. Young, 695 S.W.2d 882, 883-884 (Mo.banc 1985).

State v. Mahan, 971 S.W.2d 307 (Mo. banc. 1998).

State v. Barnes, 942 S.W.2d 362 (Mo. banc 1997).

State v. Stone, 926 S.W.2d 895 (Mo.App. W.D. 1996).

State v. Hatton, 918 S.W.2d 790 (Mo. banc 1996).

State v. Allen, 905 S.W.2d 862 (Mo. banc 1995).

State v. McMilian, 649 S.W.2d 467, 471 (Mo.App.W.D. 1983).

State v. Shaw, 847 S.W.2d 768, 775 (Mo. banc 1993).

Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52, 55 (Mo.App. E.D. 1990).

State v. Errington, 355 S.W.2d 952, 955 (Mo. banc 1962).

In re Trapp, 593 S.W.2d 193, 202 (Mo. banc 1980).

ARGUMENT

THE TRIAL COURT ERRED IN DISMISSING COUNT I, ABANDONMENT OF A CORPSE, BASED ON THE ALLEGED VAGUENESS OF THE CRIMINAL STATUTE IN QUESTION, SECTION 194.425 RSMo., FOR THE REASON THAT THE STATUTE GIVES SUFFICIENT NOTICE AND FAIR WARNING TO PERSONS OF ORDINARY INTELLIGENCE OF WHAT CONDUCT IS PROHIBITED, AND ADEQUATELY INFORMS PERSONS OF ORDINARY INTELLIGENCE OF WHAT OBLIGATIONS THEY HAVE UNDER THE STATUTE AND GIVES ADEQUATE GUIDANCE TO PROSECUTING AUTHORITIES TO PREVENT ARBITRARY AND DISCRIMINATORY APPLICATION.

In 1995, the Missouri legislature created the criminal offense of "abandonment of a corpse" in the State of Missouri. The provisions of the statute read as follows:

CRIME OF ABANDONMENT OF A CORPSE

194.425. Abandonment of a corpse without notifying authorities, penalty.

1. A person commits the crime of abandonment of a corpse if that person

abandons, disposes, deserts, or leaves a corpse without properly reporting the location of the body to the proper law enforcement officials in that county.

2. Abandonment of a corpse is a class D felony.

A check of the Southwestern Reporter through 38 S.W.3d shows no cases yet interpreting the "abandonment of a corpse" statute.

THE "VOID FOR VAGUENESS" TEST

It is well established law that a criminal statute is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the United States Constitution if it is so vague that it fails to give fair warning to a reasonable person of ordinary intelligence as to what conduct is prohibited. The test has been stated repeatedly by Missouri's higher courts, most recently by the Missouri Court of Appeals (Southern District):

> In determining whether a statute is void for vagueness, the standard is whether the terms or words used in the statute are of common usage and are understandable by persons of ordinary intelligence. *State v. Mahurin*, 799 S.W.2d 840, 842 (Mo. banc 1990), *cert denied* 502 U.S. 825, 112 S.Ct. 90, 116 L.Ed.2d 62 (1991). A valid statute must give a person of ordinary intelligence a reasonable opportunity to learn what is prohibited. *Id.*

State v. Wiles, 26 S.W.3d 436, 442 (Mo.App. S.D. 2000). The test has been described as two-

fold in purpose by the Missouri Supreme Court:

> Vagueness, as a due process violation, takes two forms. One is the lack of notice given a potential offender because the statute is so unclear that 'men of common intelligence must necessarily guess at its meaning.' The second is that the vagueness doctrine assures that guidance, through explicit standards, will be afforded to those who must apply the statute, avoiding possible arbitrary and discriminatory application.

State v. Young, 695 S.W.2d 882, 884 (Mo.banc 1985). The *Young* court added that "statutes are presumed constitutional and will be held otherwise only if they clearly contravene some constitutional provision" and that "doubts are to be resolved in favor of validity." *Id* at 883. The Court also held that in determining vagueness, the Court is not to try to think of hypothetical situations under which "the language used might be vague or confusing," but rather is to apply it "to the facts at hand." *Id* at 884.

The test of whether a reasonably intelligent person would have been able to read a criminal statute and realize that his conduct was prohibited has been used recently to uphold Missouri's DWI statutes, *Wiles, supra;* Missouri's statute

prohibiting the creation of a grave and unjustifiable risk of infecting another with HIV, *State v. Mahan*, 971 S.W.2d 307 (Mo. banc. 1998); Missouri's worker's compensation fraud statute, *State v. Barnes*, 942 S.W.2d 362 (Mo. banc 1997); Missouri's statute regarding illegal possession of wildlife, *State v. Stone*, 926 S.W.2d 895 (Mo.App. W.D. 1996); Missouri's

statute enhancing punishment for distribution of controlled substances within 1,000 feet of public housing, *State v. Hatton*, 918 S.W.2d 790 (Mo. banc 1996); and, Missouri's misdemeanor hazing statute, *State v. Allen*, 905 S.W.2d 862 (Mo. banc 1995).

In the case at hand, the defendant is charged with leaving the body of his deceased wife in their apartment while he went to work. (Defendant has also been charged with misdemeanor child endangerment for leaving his three year old daughter alone with her deceased mother for three or four hours before notifying authorities.) Defendant argues that he had no way of knowing what "proper notice" was or what the "proper law enforcement officials" may have been. However, the defendant is not charged with improper reporting or with reporting to the wrong law enforcement officials–the facts that the State expects to adduce will establish that the defendant did not provide <u>any</u> notice to <u>anyone,</u> until he pretended to call his home and reach his three-year-old child. The evidence will also show that the defendant apparently had no problem contacting law enforcement and emergency medical personnel via the 911 system when he belatedly decided to call them later

that morning.

As the law stands in the State of Missouri, the defendant was clearly on notice of his prohibited act. Defendant does not complain of arbitrary or discriminatory prosecution; but the caselaw shows that such argument, even if made by the defendant, must fail on the facts in this case.

In *Wiles*, *supra*, the defendant had been charged with "operating" a motor vehicle while intoxicated. The defendant appealed his conviction for DWI, arguing that Missouri's DWI

statutes (in particular, §§577.010.1 RSMo. 1994 and 577.100.1 RSMo. Cum.Supp. 1998) were unconstitutionally vague when read in conjunction with each other, since a person of common intelligence would have to guess at the meaning of the statutes and what conduct was prohibited. The appellate court disagreed, finding that the word "operate" has a "plain and ordinary meaning cognizable by a person of ordinary intelligence." *Wiles,* at 443. The court also noted, citing *State v. McMilian,* 649 S.W.2d 467, 471 (Mo.App.W.D. 1983): "It is not the fact that the legislative branch of government which enacted the statute could have chosen more precise or clearer language which determines the issue of vagueness." *Wiles,* at 442.

In *Mahan, supra,* the Missouri Supreme Court rejected the defendant's argument that the phrase "grave and unjustifiable risk" as used in §191.677 RSMo. did not give fair notice of prohibited conduct and did not provide standards to

enforcement officers to prevent arbitrary and discriminatory enforcement. The Court conceded that it may have been possible to "hypothesize conduct that would not fall clearly in or out of the statutory prohibition on creating a 'grave and unjustifiable' risk of HIV infection." The Court went on to point out "it is not necessary to determine if a situation could be imagined in which the language used might be vague or confusing" and that the language in question was to be evaluated by "applying it to the facts at hand." *Mahan,* at 312, *citing State v. Young,* 695 S.W.2d 882, 883-84 (Mo. banc 1985).

In *Barnes, supra,* the defendant appealed her conviction for worker's compensation fraud, arguing that the terms "knowingly," "false," "statement," and "benefit" in § 287.128.1(8) RSMo. were so unclear that people of common intelligence must guess at their meaning. The

Supreme Court was unconvinced, and found that "due process requires no more than the statute convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Barnes,* at 366, *citing State v. Shaw,* 847 S.W.2d 768, 775 (Mo. banc 1993). The Court went on to find that "a statute is not unconstitutional even when it 'employs words that, although vague in the abstract, have come to have settled meanings within an area of law.'" *Id.*

In *Stone,* the defendant was convicted of illegal possession of wildlife, based upon her failure to construct a pen of sufficient strength to prevent the escape of her

three mountain lions. Defendant argued that the phrase "material of sufficient strength to prevent escape" was unconstitutionally vague because it is "completely subjective" in that different interpretations would apply based on the breed of animal involved. The Court of Appeals (Western District) pointed out that "language which reasonable people can understand is not impermissibly vague merely because it requires interpretation on a case by case basis." *Stone,* at 899, *citing Fitzgerald v. City of Maryland Heights,* 796 S.W.2d 52, 55 (Mo.App. E.D. 1990).

In *Hatton,* the Supreme Court held that "the legislature is not required to adhere to impossible standards of specificity, but, rather due process requires no more than that statute convey sufficiently definite warning as to proscribed conduct when measured by common understanding and practices." *State v. Hatton,* 918 S.W.2d at 793, *citing State v. Errington,* 355 S.W.2d 952, 955 (Mo. banc 1962) and *In re Trapp,* 593 S.W.2d 193, 202 (Mo. banc 1980). The Court found that the phrase "public housing" had found its way into common

parlance and had a commonly understood and accepted meaning among persons of ordinary intelligence and experience. *Hatton*, at 793. The defendant next argued that because there was no way to tell whether "military barracks, public university dormitories, county jails, and veterans homes are included or excluded" that the statute should be taken as evidence that the statute was unconstitutionally vague. The Supreme Court found this argument unpersuasive as well, pointing out that the fact that the phrase might

be ambiguous in other settings was of no consequence, citing their earlier holding in *State v. Young*. ("On a challenge that a statute or ordinance is unconstitutionally vague, it is not necessary to determine if a situation could be imagined in which the language used might be vague or confusing; the language is to be treated by applying it to the facts at hand.")

In *Allen*, the defendant appealed his conviction of five counts of misdemeanor hazing, "asserting in a conclusory fashion that §578.360 RSMo. both fails to warn him of the conduct it forbids and permits arbitrary and discriminatory enforcement." *Allen*, at 877. The Supreme Court disagreed, stating:

> It is, of course, virtually impossible for the legislature to employ the English language with sufficient precision to satisfy a mind intent on conjuring up hypothetical circumstances in which commonly understood words seem momentarily ambiguous. The constitution, however, does not demand that the General Assembly use words that lie beyond the possibility of manipulation. Instead, the constitutional due process demand is

> met if the words used bear a meaning commonly understood by persons of ordinary intelligence.

Id.

In the case at hand, the legislature might have chosen more precise or clearer language, but the language used in the statute is sufficient to place the defendant on notice that he must report a corpse to law enforcement officials before leaving the location of the corpse. The word "corpse" is succinctly defined in Webster's Dictionary as "a dead body." The word "proper" is defined by the American Heritage Dictionary as "suitable; appropriate." While the phrase "law enforcement official" is not in the dictionary, it is a phrase of common usage. A "law enforcement officer" is defined by Missouri statute as "any public servant having both the power and duty to make arrests for violations of the laws of this state." §556.061, RSMo. An "official" is defined by Webster's Dictionary as "one who holds an office or position." It is clear that a person of ordinary intelligence would have picked up the telephone and called 911 for assistance, recognizing that the person on the other end of the 911 call would be "proper law enforcement official." Even realizing that since she was already dead, an ambulance would not be needed, a reasonable person would have called the Jackson Police Department or the Cape Girardeau County Sheriff's Department to report the death.

CONCLUSION

For the reasons stated above, the trial court erred in finding the Missouri statute criminalizing abandonment of a corpse unconstitutionally void for vagueness, and the charge for said offense should be reinstated against the Respondent.

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CERTIFICATE OF COMPLIANCE AND SERVICE

Lora E. Cooper, Assistant Prosecuting Attorney of Cape Girardeau County, upon her oath, states as follows: (1) that ten copies of this brief have been mailed on this date to the Missouri Supreme Court; (2) that this brief complies with the limitations contained in Local Rule 360 of this Court and contains 2928 words, including the cover and this certification, as determined by WordPerfect software; (3) that the floppy disk filed with this brief contains a copy of this brief and has been scanned for viruses with an updated copy of Norton Anti-virus 2000 and is virus-free; and (4) that a floppy disk containing a copy of this brief has been mailed, postage prepaid, along with two copies of this brief, to opposing counsel, Steve Wilson, by US Mail, at his business address at P.O. Box 512, Cape Girardeau, MO 63701, this 13th day of December, 2001.

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Lora E. Cooper